

EXHIBIT “A”

UNITED STATES DISTRICT COURT
~~NORTHERN DISTRICT OF CALIFORNIA~~
SAN JOSE FACILITY

ELIEL PAULINO,

Plaintiff,

vs.

No. CV 16-02642-NC

MARCO CRUZ, INDIVIDUALLY AND AS AN
OFFICER OF THE SAN JOSE POLICE
DEPARTMENT, GERARDO SILVA,
INDIVIDUALLY AND AS AN OFFICER OF
THE SAN JOSE POLICE DEPARTMENT,
GURBAKSH SOHAL, INDIVIDUALLY AND
AS AN OFFICER OF THE SAN JOSE
POLICE DEPARTMENT, AND DOES 1 -
10, INCLUSIVE,
Defendants.

DEPOSITION OF GURBAKSH SOHAL

Date: Wednesday, October 19, 2016
Time: 10:03 a.m.
Location: LAW OFFICE OF MORALES & LEANOS
75 East Santa Clara Street
Suite 250
San Jose, CA 95113

Reported by: TERRY deDIEGO



Certified Shorthand Reporter
210 North Fourth Street, Suite 201
San Jose, CA 95113-5569
License No. (408) 295-8301
(800) 590-9958
Fax: (408) 295-4544
Paragoncsr@aol.com

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1 Q. Because I see you are trying to divide your
2 attention between me and the camera, but whatever is
3 easier for you works for everybody here.

4 A. Understood.

5 Q. The materials we talked about, your police
6 report, the CAD event, the photographs, the video, did
7 you use those to refresh your recollection and prepare
8 you for today?

9 A. For today, yes.

10 Q. Okay. At some point, I may visit or introduce
11 those -- those materials to ask you some questions, and
12 you will have an opportunity to refresh your
13 recollection, if necessary. Okay?

14 A. Okay.

15 Q. All right.

16 Now, do you recall when this incident occurred?

17 A. Yes.

18 Q. And what date was that?

19 A. August 16th of 2015.

20 Q. Okay. And was it morning, noon or night, to
21 the best of your recollection?

22 A. I believe it was approximately 0208 hours, so
23 early morning.

24 Q. Okay. And in normal people's time, what would
25 0208 hours mean?

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1 A. 2:00 o'clock, 2:08 a.m.

2 Q. Okay. So in the early morning hours?

3 A. Correct.

4 Q. Okay. And do you recall the location of this
5 particular event?

6 A. Yes.

7 Q. And that location?

8 A. It was the area of Cadillac and Winchester
9 around the complex of 3137 and 3145, uh, Cadillac.

10 Q. Cadillac Drive?

11 A. Uh, I believe so.

12 Q. Okay. Is that here in San Jose?

13 A. Yes, it is.

14 Q. Now, did you prepare a report in relation to
15 this matter?

16 A. I did.

17 MR. LEANOS: Madam reporter, if we can have the
18 next exhibit marked.

19 (Police report marked Plaintiff's Exhibit 2 for
20 identification.)

21 Q. (By Mr. Leanos): And I will call you -- I will
22 refer to you as Officer Sohal.

23 I am going to show you what has been marked as
24 Plaintiff's Exhibit 2.

25 Just have you take a few minutes or a few

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1 A. There is no audio and very grainy. You can
2 barely see what is going on.

3 Q. Okay. So the video itself is grainy; is that
4 what your testimony is?

5 A. Yes, it is grainy.

6 Q. Okay. And the video, there is no audio?

7 A. There is no audio.

8 Q. Aside from those two elements, is the video an
9 accurate depiction of what occurred on the morning of
10 August 16th, 2015, when Mr. Paulino was taken into
11 custody?

12 A. In my belief, no.

13 Q. And why not?

14 A. It doesn't show, uh, Mr. Paulino, uh, resisting
15 and actively preventing us from obtaining his arm.

16 Q. Okay. So your testimony is this video doesn't
17 show Mr. Paulino resisting?

18 A. Yeah, you do not see that in the video.

19 Q. Okay. And it doesn't show what else?

20 A. Him actively resisting and preventing us from
21 obtaining his arm and taking him into custody.

22 Q. Okay. So your testimony today is that at the
23 time that that video was shown, Mr. Paulino was actively
24 resisting arrest?

25 A. Correct.

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1 Q. And he was also trying to prevent you from
2 taking him into custody?

3 A. My testimony is that at that time where that
4 video shows, that Mr. Paulino was actively resisting and
5 preventing me from taking him into custody and possibly
6 harming himself.

7 Q. At what point in the video that we can't see is
8 Mr. Paulino actively resisting?

9 A. From the point that Officer Cruz tries to grab
10 his arm to the point where we place him into handcuffs.

11 Q. Are you aware that there was a civilian witness
12 that also saw the events between you and Mr. Paulino?

13 A. That -- your civilian witness you are referring
14 to, is it his father?

15 Q. No. Are you -- do you know a person named Jose
16 Ramirez?

17 A. No.

18 Q. Do you know if the person who took the video
19 was named Jose Ramirez?

20 A. No.

21 Q. Are you aware that there is a civilian witness
22 named Jose Ramirez who saw the incident between you and
23 Mr. Paulino on the morning of August 16th, 2015?

24 A. I am not aware.

25 Q. So I just want to make sure I understand your

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1 testimony.

2 So your testimony today here is that that video
3 is not an accurate representation of this incident?

4 A. Maybe -- can you explain what you mean by what
5 "accurate" means as far as --

6 Q. I'm sorry.

7 A. The video is a video. I am not disputing the
8 fact that it captured the incident. But it doesn't, in
9 my words, accurately describe what was going on, because
10 you do not see Mr. Paulino actively resisting,
11 preventing us from grabbing his arms, and disobeying our
12 commands and actually physically taken into custody.

13 Q. Okay. So now, going back to the night of the
14 incident, before the actual physical interaction between
15 you or between Officer Cruz and Mr. Paulino occurred,
16 Mr. Paulino had been stopped or at least detained for
17 about approximately eight minutes; correct?

18 MS. CHOW: Objection. Vague.

19 Go ahead.

20 THE WITNESS: I would have to look at the, uh,
21 the time stamps, but it was possibly around that time
22 frame.

23 MR. LEANOS: Okay.

24 Q. (By Mr. Leanos): And during those eight
25 minutes, was he complying with your orders?

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1 A. Depends on what you mean by "complying," what
2 orders you are referring to.

3 Q. Well, let's see, you told him to stay in his
4 car when you first made contact with him?

5 MS. CHOW: Objection. Assumes facts not in
6 evidence.

7 MR. LEANOS: I'm sorry.

8 MS. CHOW: Go ahead.

9 Q. (By Mr. Leanos): You told him to stay in his
10 truck when you first made contact with him?

11 MS. CHOW: Same objection.

12 Go ahead.

13 THE WITNESS: My first contact with him was my
14 activation of lights and sirens, which was on Cadillac
15 Drive.

16 The subject refused to pull over immediately to
17 the right-hand side, continued to drive down the alley
18 way. We had repeated horns. He refused to pull over
19 and stop when we had the horns. He then made a
20 right-hand turn and refused to pull over there. He then
21 made a left-hand turn into a parking spot, and at that
22 point he immediately already failed to yield to
23 emergency lights and sirens. And did not -- was not
24 complying.

25 Q. (By Mr. Leanos): Officer Sohal, can you baton

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1 someone for refusing to pull over their vehicle?

2 MS. CHOW: Objection. Calls for hypothetical.
3 Go ahead.

4 THE WITNESS: No.

5 Q. (By Mr. Leanos): Now, from when you first
6 turned on your emergency lights to where you say he then
7 turned into an apartment complex and then went into a
8 parking spot, I believe, under a carport, how long did
9 that take, approximate?

10 A. Maybe 30 seconds.

11 Q. Okay. So from when you first wanted to pull
12 him over to where he actually parked his car, 30 seconds
13 passed?

14 A. Approximately.

15 Q. Why was he being pulled over?

16 A. He did not have a proper functioning license
17 plate light, it was not legible from, uh, 50 feet.

18 Q. So were you driving or were you the passenger
19 that night?

20 A. I was driving.

21 Q. Okay. And who noticed that his license plate
22 light wasn't functioning?

23 A. I noticed it as well as -- I can't speak on
24 what Officer Silva, I guess.

25 Q. You noticed it?

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1 Go ahead.

2 THE WITNESS: Pulled him over for the not
3 working, the not properly functioning license plate
4 light.

5 Q. (By Mr. Leanos): Did you ever observe him
6 speeding prior to pulling him over?

7 A. I don't recall that.

8 Q. Do you recall him weaving or driving recklessly
9 before you pulled him over?

10 A. I just noticed the license plate light and
11 conducted a traffic enforcement stop for that violation.

12 Q. Now, when you saw the vehicle, did you
13 recognize that vehicle?

14 A. No.

15 Q. Had you had any prior contacts with that
16 vehicle?

17 A. No, not that I recall.

18 Q. And we keep saying -- I said "car," it was a
19 mistake. It is actually like an SUV or would that be
20 fair to say?

21 A. Yeah, it is an SUV.

22 Q. Okay. Prior to August 16th, 2015, had you ever
23 had any prior contacts with Mr. Paulino?

24 A. Not that I recall.

25 Q. Prior to August 16th, 2015, had you ever had

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1 any prior contacts with 3137 Cadillac Drive, Apartment
2 16?

3 A. Um, very familiar with that complex and that
4 area. Um, but not specifically with 3137, Apartment 16.

5 MR. LEANOS: I would like to take a break. We
6 have been going for about an hour.

7 THE VIDEOGRAPHER: We are going off the record.
8 The time is 11:15 a.m.

9 (Recess taken.)

10 THE VIDEOGRAPHER: We are back on the record.
11 11:23 a.m.

12 Please proceed.

13 Q. (By Mr. Leanos): Thank you.

14 Officer Sohal, we basically, I think, finished
15 the last session with you seeing the video and you
16 indicating that the video is not necessarily an accurate
17 depiction of what occurred, because it doesn't show
18 Mr. Paulino resisting or refusing to obey your verbal
19 commands; correct?

20 A. Verbal and, uh, physical attempts to remove his
21 arm.

22 Q. Now, I want to come back now to your police
23 report.

24 You have a copy of that?

25 A. Yes, I do.

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1 Q. I am going to ask you some questions about your
2 police report.

3 What I would like you to do is bring your
4 attention to the investigation of narrative facts
5 section which, I believe, is Bates-stamped SJ 0023.

6 Are you on that page?

7 A. I am.

8 Q. Okay. So just in terms of your report, if we
9 look at the first paragraph, apparently it indicates
10 that you and Officer Silva were in a two-man patrol
11 vehicle when you saw Mr. Paulino's vehicle; correct?

12 A. That's correct.

13 Q. And then you decided because of the license
14 plate light not working, that you would pull him over to
15 investigate; correct?

16 A. We conducted a traffic enforcement stop for
17 that violation.

18 Q. Now, I want to then talk to you about paragraph
19 two. Okay. Which is the next paragraph down.

20 There is a paragraph there where you say this
21 area of the vehicle stop is known as a gang area, and
22 then you reference something, I think it is pronounced
23 Sur, which is S-u-r, trece, which is t-r-e-c-e, and then
24 Sureno, which is s-u-r-e-n-o.

25 Do you see that in your -- in your police

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1 Q. (By Mr. Leanos): Now, so you believe that the
2 fact that Mr. Paulino was near a -- I guess a gang area,
3 you believe that was relevant to include in your police
4 report?

5 A. Yes.

6 Q. Is everyone who lives in this area a gang
7 member?

8 MS. CHOW: Objection. Calls for hypothetical.
9 Go ahead.

10 THE WITNESS: I don't know everyone that lives
11 in that area, but based off of being around that area
12 and having contacts, I know that everyone is not a gang
13 member.

14 MR. LEANOS: Okay.

15 Q. (By Mr. Leanos): So I just want to make sure I
16 understand your testimony.

17 So not everyone who lives in that area is a
18 gang member; is that true?

19 A. I do not believe everyone that lives in that
20 area is a gang member.

21 Q. As a matter of fact, Mr. Paulino is not a gang
22 member that you know of, is he?

23 MS. CHOW: Objection. Calls for speculation.
24 Go ahead.

25 THE WITNESS: From what I observed, I did not

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1 believe to think he was a gang member.

2 Q. (By Mr. Leanos): He wasn't dressed like a gang
3 member, was he?

4 A. From what I recall, he was not.

5 Q. He wasn't wearing gang colors, was he?

6 A. From what I recall, there was nothing that he
7 was wearing that made me believe he was a gang member.

8 Q. Yet you can't -- it wouldn't be appropriate to
9 baton someone just because they lived in a gang area,
10 would it?

11 MS. CHOW: Objection. Calls for --
12 argumentative.

13 Go ahead.

14 THE WITNESS: Can you repeat the question.

15 Q. (By Mr. Leanos): Sure. Would it be
16 appropriate for an officer to use his baton on someone
17 just because they lived in a gang area?

18 MS. CHOW: Objection. Also calls for
19 hypothetical.

20 Go ahead.

21 THE WITNESS: It would not be appropriate just
22 to baton just to be a gang member.

23 Q. (By Mr. Leanos): I think that's a little bit
24 different.

25 It would not be appropriate to baton someone

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1 vehicle?

2 A. I do not recall.

3 Q. Do you know if Mr. Paulino exited his vehicle
4 immediately?

5 A. I believe it was once we called him back to our
6 vehicle.

7 Q. So after he parked in the carport, he stayed in
8 his vehicle?

9 A. For a time period, yes.

10 Q. Okay. And then eventually, was it you or was
11 it Officer Silva who asked him to exit his vehicle, if
12 you recall?

13 A. Don't recall. I believe it was Officer Silva.

14 Q. Okay. And when Officer Silva asked Mr. Paulino
15 to exit his vehicle, did Mr. Paulino comply with his
16 order?

17 A. Um, he did exit his vehicle, yes.

18 Q. And when he ordered -- or when he exited his
19 vehicle, where did he go?

20 A. He came to the front right quarter panel region
21 of our vehicle.

22 Q. And is that where you had directed him to go?

23 MS. CHOW: Objection. Misstates prior
24 testimony.

25 THE WITNESS: Uh, we -- he was asked to step

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1 you believe he was agitated?

2 A. I noticed his facial expressions, um, that, you
3 know, he was just, you know, what I perceived from the
4 way he reacted as he was walking towards us that you
5 know he was agitated, that he was, you know, during our
6 stop.

7 Q. Did he say anything to you specifically that
8 you thought was appeared agitating?

9 A. Not that I recall.

10 Q. Did he threaten you or threaten Officer Silva?

11 A. Not that I recall.

12 Q. Was he acting belligerent in any way?

13 A. Not that I recall.

14 Q. Now, next paragraph, you basically mention that
15 Mr. Paulino was wearing loose jeans with bulges in it
16 and that he had a T-shirt on, so you did a quick cursory
17 pat search; correct?

18 A. Correct.

19 Q. What do you do during a cursory pat search?

20 A. Uh, we are doing an outer clothing, um, pat
21 down search for weapons, anything that would
22 immediately, uh, put myself or the other officers in
23 danger.

24 Q. And you mentioned that his jeans that there
25 were bulges, where were the bulges?

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1 A. In his pockets.

2 Q. So did you check the bulges when you did the
3 pat search?

4 A. I do an outside of a clothing pat down of those
5 bulges, um, just to see if I could immediately recognize
6 it to be a weapon.

7 Q. Did you locate anything that you considered to
8 be a weapon?

9 A. Not during the pat search, no.

10 Q. Did you check his legs, also, and his socks
11 when you do the pat search?

12 A. Yes, I did.

13 Q. Locate anything that would appear to be a
14 weapon?

15 A. No, I did not.

16 Q. Did you check his pockets?

17 A. I did not go inside his pockets. That's out of
18 my scope in the pat search.

19 Q. Did you check the outside of his pockets?

20 A. I did a pat search, yes.

21 Q. How about his waistband, did you check his
22 waistband?

23 A. I went along his, uh, belt line.

24 Q. So would that be the waistband?

25 A. Yes.

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1 Q. Did you locate any weapons?

2 A. No, I did not.

3 Q. Okay. Did Mr. Paulino comply with you while
4 you were doing this search?

5 A. Yes, there was nothing that made me feel that

6 --

7 Q. So he was cooperative?

8 A. At that point, yes.

9 Q. Was he still agitated?

10 A. Possibly, I don't recall.

11 Q. After you pat search him, Mr. Paulino then
12 hands you his I.D. or hands Officer Silva his I.D.?

13 A. Yes, he hands one of us his I.D.

14 Q. And I believe either you or Officer Silva then
15 start asking him some more questions about his name and
16 date of birth?

17 A. Correct.

18 Q. And then at this point I believe Officer Silva
19 then, I think, maybe goes to the patrol car to check his
20 I.D.?

21 A. Well, I believe there was a dispute about his
22 actual birth date.

23 Q. What was that dispute?

24 A. Paulino said he was born in 1986. The I.D.
25 stated otherwise.

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1 A. Very limited.

2 Q. Were you able to speak with Mr. Paulino that
3 night in Spanish?

4 A. For basic name and DOB information.

5 Q. Now, I want to go down to paragraph eight,
6 which, I believe, is the second to last paragraph on
7 document 23.

8 At about five minutes into the stop, Officer
9 Cruz shows up to assist you and Officer Silva; correct?

10 MS. CHOW: Okay. Misstates what is in the
11 document.

12 Go ahead.

13 MR. LEANOS: I'm sorry.

14 Q. (By Mr. Leanos): Is it -- according to your
15 paragraph eight, Officer Cruz responded to your scene to
16 assist in the DUI investigation; correct?

17 A. Correct.

18 Q. Now, did you ask Officer Cruz to join you or
19 did he just show up to assist you?

20 A. Just showed up.

21 Q. When Officer Cruz arrived, did you tell Officer
22 Cruz that you already had checked Mr. Paulino for
23 weapons?

24 A. I did not.

25 Q. Now, at some point, then, I believe, after

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1 Officer Cruz was there, Mr. Paulino is asked to move to
2 the right front quarter panel of the patrol vehicle; is
3 that fair?

4 A. Correct.

5 Q. Okay. And does Mr. Paulino comply with that
6 order?

7 A. Based on the video, he moves over.

8 Q. And leans up against the patrol vehicle?

9 A. He moves over to that general region.

10 Q. And that's because the officer or Officer Silva
11 or somebody -- strike that.

12 Officer Cruz or someone asked him to move over
13 to the front of the vehicle?

14 A. Yes, because --

15 MS. CHOW: Calls for speculation.

16 Go ahead.

17 THE WITNESS: Yeah, because his back would have
18 been to the open window with the, you know, subject in
19 there with an open threat, so he was just trying to get
20 to a point where he doesn't have to worry about having
21 his back to the open window where there could be
22 multitude of threats.

23 Q. (By Mr. Leanos): And Officer Cruz actually
24 stays with Mr. Paulino once he moves to the patrol
25 vehicle?

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1 Kind of like stays and watches him?

2 A. Yes.

3 Q. Okay. And so Officer Cruz's job at that point
4 was to monitor Mr. Paulino, and then you went back to
5 the truck to -- to search it or review or look into it;
6 right?

7 A. Yeah, Officer Cruz was there to assist us
8 because multitude of just the known area, and it is, you
9 know, make sure that we don't have someone where while
10 we are conducting our investigation that a threat does
11 not prevent itself and take us by surprise.

12 Q. Okay. So Officer Cruz stays with Mr. Paulino,
13 and then you go back to the truck to search?

14 A. I go back to the truck, yes.

15 Q. And Officer Silva at this point is still in the
16 patrol vehicle doing background information or looking
17 for Mr. Paulino's match or something?

18 A. Yeah, we were trying to get a match trying to
19 figure out who Mr. -- confirm Mr. Paulino, the
20 information he provided us.

21 Q. Okay. Now, in paragraph nine, you basically
22 say that, you know, that Apartment 16 window -- back
23 window at 3137 Cadillac Drive that you observed
24 Mr. Paulino's father; is that correct?

25 A. That's correct.

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1 Q. Okay. And he was yelling at the officers?

2 A. Yes, he was, uh, clearly agitated. He was, um,
3 yelling and, uh, you know, appeared to be intoxicated,
4 uh, just very, uh, agitated.

5 Q. Do you know what he was yelling?

6 A. I do not know.

7 Q. Do you know if he was yelling at anyone in
8 specific?

9 A. It was towards our general area, but I don't
10 know what Mr. Paulino -- reference to Eliel --

11 Q. Eliel?

12 A. Eliel's father was thinking.

13 Q. And do you recall if he said anything in
14 English?

15 A. Not that I recall.

16 Q. Now, at some point you went over to the window
17 just to look at Mr. Paulino's father and also to look
18 inside the apartment; correct?

19 A. That's not correct.

20 Q. Okay. So at some point, did you approach the
21 window to observe anything?

22 A. I did.

23 Q. When did that happen?

24 A. Happened while Mr. -- Officer Cruz was watching
25 Eliel.

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1 Q. And were you able to see Mr. Paulino -- strike
2 that.

3 Were you able to see Mr. Paulino's father
4 inside the apartment?

5 A. Uh, yes, because he was also retreating out of
6 the apartment.

7 Q. Okay. And were you also able to look inside
8 the apartment at least in the area he was seated?

9 A. Yeah, I tried to take a quick look around to
10 see if there was any threats, and I noticed a bunch of
11 beer cans in the kitchen.

12 Q. Okay. But -- you didn't see any weapons, but
13 you saw several beer cans?

14 A. Uh, well, I mean, there is a kitchen. There is
15 knives, those are potential weapons.

16 Q. Did you see any knives when you looked into the
17 kitchen?

18 A. Um, I don't recall. I -- so long ago that at
19 this point, I don't remember.

20 Q. Did -- and you said that Mr. Paulino's father
21 seemed agitated?

22 A. Yes.

23 Q. How was he acting agitated?

24 A. Um, he was yelling at us. I don't understand
25 Spanish, but he was talking at a very loud and